

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1238/87
Tx. No.

198

DATE OF DECISION 28.9.90

M.L.Shansar

Petitioner

R.L.Sethi

Advocate for the Petitioner(s)

Versus

Union of India and others

Respondent

P.H.Ramchandani, Sr. Standing Advocate for the Respondent(s)
counsel for Govt. of India

CORAM :

The Hon'ble Mr. S.P.Mukerji, Vice Chairman

The Hon'ble Mr. J.P.Sharma, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

O.A.1238/87

O R D E R
(Pronounced by Hon'ble Shri S.P.Mukerji, Vice Chair man)

Under Section 19 of A.T. Act
 In this application dated 31.8.87 the applicant
 who has been working as Upper Division Clerk in the office
 of the Commissioner of Income-Tax, New Delhi has challenged
 the report of the Enquiry Officer dated 2/4th August, 1984
 at Annexure A.5 as also the order of punishment dated
 18.9.84 reverting him to the post of UDC and withholding
 increment and promotions for two years and the order in
 revision dated 9th March, 1987 at Annexure A.1 rejecting
 his representation. He has prayed that status quo as on
 18.9.84 be restored with all consequential benefits of
 confirmation as Head Clerk and promotion to higher grades.

2. The brief facts of the case are as follows.

The applicant joined the Income-Tax Department on 5.2.59
 as an L.D.C. was promoted as UDC on 22.5.64 and then as
 Head Clerk on 22.7.75. While as Head Clerk he allegedly
 remained on unauthorised absence ^{from} ~~from~~ duty for a period
 of 231 days from 15.3.83 to 31.10.83. He was charge
 sheeted on 31.8.84 under Rule 14 of the CCS(CCA) Rules
 with the following articles of charges:

"(1) Shri Sahansar had remained on unauthorised
 absence from duty for a period of 231 days from
 15.3.83 to 31.10.83. He had not replied to
 the correspondence addressed to him by the auth-
 orities and he was not available whenever the
 postman visited his premises to deliver letters.
 There was no proof to show that he had applied
 for leave during the period of absence.

(2) Shri Sahansar dis-obeyed official orders
 directing him to appear before the medical
 authorities of CGHS dispensary of his area, for
 verification of the illness mentioned by him in
 the medical certificate filed by him on joining
 duty on 1.11.83. He was also asked to appear
 before the Medical Superintendent of Ram Manohar
 Lohia Hospital for the purpose but he refused
 to do so. Thereby he was alleged to have
 committed an act of in-subordination.

(3) Shri Sahansar was a habitual late-comer. He had attended office late for 8 days in Nov. 1983. Although he had promised to show improvement but he failed to show any improvement in this regard.

(4) Shri Sahansar did not perform the official duties assigned to him. He was asked to maintain a daily diary of the work done by him and submit the same to his supervisory authorities. Shri Sahansar submitted a daily diary in which however, he had shown the work done by the other members of the staff and not by himself. He had, however, failed to submit any diary containing information about the work done by him.

Thereby he was alleged to have exhibited a conduct unbecoming of Govt. servant and had thereby violated Rule 3(i)(iii) of the CCS(C) Rules."

The Enquiry Officer found that all the articles of charge were proved. The Disciplinary authority on the basis of the findings of the Enquiry Officer passed the impugned order of punishment dated 18.9.84 imposing simultaneously one major penalty and two minor penalties as follows:

- "(i) Reversion to the post of UDC with pay fixed at Rs. 404/- in the scale of Rs. 330/-...Rs.560/-.
- (ii) Not to draw increment in the scale of UDC for a period of 2 years.
- (iii) Not to be eligible for promotion to a higher grade during the aforesaid period of two years."

The Board rejected his appeal on 18.7.85 and the revision petition was dismissed by the President on 9.3.87. The applicant has taken various grounds to challenge the disciplinary proceedings and the punishment orders. Firstly, he has argued that the articles of charges have not been authenticated by the Disciplinary Authority. Secondly, he has contended that the Presenting Officer Shri J.R.Channa had been quoted as one of the Prosecution Witnesses by whom the articles of charges were proposed to be sustained in contravention of Government of India decision No.12 below Rule 14 of the CCS(CCA) Rules. His

further contentions are that the documents enumerated at Annexure 3 and 4 of the charge sheet were not made available to him despite repeated requests nor the minutes of the daily proceedings and hearings were supplied. His ~~XXXXXX~~ grievance ^{also} is that the Defence Assistant was not allowed to him and none of the prosecution witnesses was examined in the presence of the applicant. His argument is that the finding of guilt on his part was based on no evidence. His allegation is that the various intimations and applications sent for leave under Certificate of Posting had been ignored by the respondents and that since he was allowed to join duty on 1.11.83 it could be presumed that the medical certificate and fitness ^{certificate} produced had been accepted by the competent authority. If the respondents had any doubt about his illness in the past he should have been required to appear before a medical board for second opinion. About his habitual late coming, he has argued that never in his 28 years of service had he ^{been} warned or reprimanded or charge-sheeted for being late, and the Inspecting Officer had observed only two instances of his coming late. He has denied that he has not been maintaining daily diaries. He also challenged the order of punishments by stating that a number of penalties were imposed simultaneously on him which bespeak of high-handedness and malice on the part of the respondents.

3. The respondents have stated that the Memorandum of charges was duly signed by the Disciplinary Authority and the articles of charges were only annexures to the Memorandum and need not be ^{be} signed by him. They have

conceded that the Presenting Officer had been named as one of the Prosecution Witnesses but have stated that there is no contravention of Rule 14 of the CCS(CCA) Rules and that the applicant had not taken this plea at any stage in the enquiry proceedings. They have clarified that the Presenting Officer was not examined as a prosecution witness. They have stated that the Regd. letters sent to his address had been received back without service as the applicant was not available at his residence. They have argued that the applicant himself admitted that he was medically fit on 1.9.83 but he reported duty on 1.11.83. If he had been ill, he would have been found at his residence. They have also indicated that adverse remarks had been given to him in the ACR year after year for being an habitual late comer and he had been served with memos and warned. They have stated that the duties assigned to the Head Clerk in the Manual of Office Procedure were not discharged by him. They have averred that the penalties levied on the applicant are in accordance with rules and that there has not been ~~any~~ illegality in the enquiry proceedings.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The operative part of the impugned order of punishment reads as follows:

"Accordingly, Shri Sahansar, the charged official, is reverted to the post/grade of UDC and his pay is fixed at Rs. 404 in the pay scale of UDC, namely Rs. 330-10-380-EB-12-500-EB-15-560. He will not draw any further increment in the scale of UDC for a period of two years, and shall not be considered for promotion to any higher grade/post during the said period of two years. On such reversion his seniority in the grade of UDC would reckon from the date of his entry in the UDC's grade/post. After the expiry of the period of two years mentioned above, he would be considered for promotion to the grade/post next higher to that of UDC, if otherwise found eligible. On subsequent promotion, if any, his seniority in the next grade/post would reckon from the date of his promotion to that grade/post, and he would not be entitled to claim seniority over any person who had been promoted to any grade/post higher than the UDC's grade/post prior to the date

of his subsequent promotion. This punishment will take effect from the date of order."

The above will show that the applicant by a single order was visited with major punishment of reversion from the grade of Head Clerk to that of UDC corresponding to the major penalty at 11(vi) of CCS(CCA) Rules as ~~two minor penalties of~~ also withholding of increments in the scale of UDC for two years corresponding to the minor penalty of 11(iv) and of withholding of promotion for two years to the higher grade corresponding to the minor penalty of 11(ii) of the CCS(CCA) Rules. The question is whether as a result of the single disciplinary proceedings more than one penalties catalogued in Rule 11 of the CCS(CCA) Rules could be imposed. The major and minor penalties can be imposed by the disciplinary authority in accordance with Sub Rule 3 and 4 of Rule 15 of the Discipline and Appeal Rules. These sub-rules are quoted as follows:

"(3) If the disciplinary authority having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in clauses (i) to (iv) of Rule 11 should be imposed on the Government servant, it shall, notwithstanding anything contained in Rule 16, make an order imposing such penalty:

Provided that in every case where it is necessary to consult the Commission the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Government servant.

(4) If the disciplinary authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry is of the opinion that any of the penalties specified in clauses (v) to (ix) of Rule 11 should be imposed on the Government servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government servant any opportunity of making representation on the penalty proposed to be imposed."

(emphasis added)

The above will show that the disciplinary authority can impose only 'any of the penalties' whether major or minor. The order of punishment could be to impose 'such penalty' and not 'such penalties'. The use of plural 'any of the penalties' and use of singular for 'imposing such penalty' give the clear indication that by a single order a single penalty can be imposed. If the intention was that more than one penalty could be imposed simultaneously the aforesaid sub-rule would have been worded as "making an order imposing such penalty or penalties" instead of "making an order imposing such penalty." The concept of the double jeopardy also disallows imposition of more than one penalty for the same disciplinary proceedings. We are also prepared to accept the contention of the applicant that by appointing one of the nominated prosecution witnesses Shri J.R.Channa as the Presenting Officer the respondents have violated the Govt. of India's decision No.12 under Rule 14 which reads as follows:

"An official who may have to appear as a witness in a disciplinary case should not be appointed as the Presenting Officer or Inquiry Officer in that case."

(emphasis added)

The above will show that if an official has to appear as a witness in a disciplinary case, he should not be appointed as a Presenting Officer. The fact that that officer did not subsequently appear as a witness would not take away the violation of the instructions which does not permit anyone to be a Presenting Officer who has been nominated to appear as witness.

5. The applicant has also taken an important ground that the order of punishment was not accompanied by the order of the enquiry report as required under

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Section 17 of the CCS(CCA) Rules. The learned counsel for the respondents showed us an acknowledgement dated 19.9.83 of the applicant having received some documents as indicated below:

"Received and duly acknowledged from Mrs. Nandita Bakshi, I.T.O(Admn). Cey.Rang-II, New Delhi, copy of order No.IAC-IV-C/84-85 dated 18.9.84 of the Chief Commissioner of Income-tax under Rule 15(4) of the C.C.S. Classification, Control and Appeal Rules, 1965.

Sd/-..11.9.83."

Though the reference number of the order refers to (a) the reference number of the enquiry report, the date (b) 18.9.84 and the designation of the authority passing (c) the order as Chief Commissioner of Income-tax and (c) the reference to Rule 15(4) of the CCS(CCA) Rules all relate to the punishment order and not the report of the Enquiry Officer. Thus it cannot be accepted that the punishment order was communicated to the applicant along with the copy of the Enquiry Report.

6. In view of the aforesaid grave infirmities in the disciplinary proceedings, we do not wish to go into the merits of the case. We allow the application, set aside the enquiry report at Annexure A.5, the punishment order at Annexure A.4 and subsequent orders in appeal and revision and direct that status quo as on 18.9.84 before the applicant was reverted as UDC be with all consequential benefits restored. The respondents will be at liberty to re-commence the disciplinary proceedings if so advised, from the stage of service of the charge-sheet, within a period of three months from the date of communication of this order. In the circumstances of the case, there will be no order as to costs.

J.P.Sharma
(J.P.Sharma)
Member(Judicial)

S.P.Mukerji
28.9.90
(S.P.Mukerji)
Vice Chairman